

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC.,	)	
	)	
Plaintiff-Counterclaim Defendant,	)	
	)	
v.	)	
	)	
LEACHCO, INC.,	)	
	)	
Defendant-Counterclaim Plaintiff/	)	
Third Party Plaintiff,	)	No. 3:07-cv-01600-ARC
	)	
and	)	(Judge A. Richard Caputo)
	)	
JAMIE S. LEACH,	)	(electronically filed)
	)	
Counterclaim Plaintiff/	)	
Third Party Plaintiff,	)	
	)	
v.	)	
	)	
JOHN M. KIEFER, JR.,	)	
	)	
Third Party Defendant.	)	

**UNOPPOSED MOTION FOR LEAVE TO FILE OVERSIZE BRIEF  
BY DEFENDANT LEACHCO, INC.**

The Defendant moves, pursuant to Local Rule 7.8(b)(3), for leave to file an oversize brief in support of the Defendant's concurrently filed motion to dismiss the antitrust claim in the Plaintiff's Amended Complaint (Doc. 44). The proposed brief has a length of 29 pages (8,380 words), exclusive of cover page, tables and certificate of service. The brief is currently due on April 11, 2008.

The undersigned counsel certifies that he has conferred by telephone with Dr. Andrew J. Katsock, III, counsel for Plaintiff, and received his concurrence to this motion.

Babyage's antitrust claim is 15 pages in length, and is premised on Leachco's resale price maintenance policy, which Babyage claims is the product of an unlawful conspiracy between Leachco and another retailer, Babies "R" Us. In a recent decision, the Supreme Court overhauled the law of resale price maintenance. See *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. \_\_\_, 127 S. Ct. 2705 (2007). In another recent decision, the Supreme Court significantly tightened the requirements for pleading an antitrust conspiracy. See *Bell Atlantic Corp. v. Twombly*, 550 U.S. \_\_\_, 127 S.Ct. 1955 (2007). Both decisions are highly relevant to the pending motion to dismiss, and must be addressed in the supporting brief. In addition, the brief must address issues of relevant market and market power, all of which must be sufficiently pleaded. Moreover, the brief must address these issues with regard to Leachco and Babies "R" Us, two companies that operate on different market levels (manufacturing and retail). Both companies are the subject of allegations in the Plaintiff's amended complaint.

Given the number and scope of allegations the in the Plaintiff's 15-page antitrust claim, it simply has not proven possible to address all of them, as well as to discuss how *Leegin*, *Twombly* and other relevant decisional law apply to these allegations, within the 15-page limit prescribed by Local Rule 7.8(b)(1). The undersigned is mindful of the volume of reading that faces the Court, and has no wish

to burden it with unnecessary or repetitive advocacy. Counsel has attempted to refine, compress and consolidate his arguments to the greatest extent possible. However, further shortening cannot be accomplished without sacrificing a complete discussion of the relevant legal and factual issues.

Under these circumstances, it is believed that a 29-page brief is reasonable. Leave to file it should be granted.

A proposed Order is submitted herewith.

Respectfully submitted,

s/ Gary Peterson  
Gary Peterson  
OK 7068  
211 N. Robinson Ave., Suite 450 South  
Oklahoma City, OK 73102  
telephone: (405) 606-3367  
fax: (866) 628-0506  
email: gp@garypeterson.com

Sean V. Kemether  
PA 70816  
Kelly Grimes Pietrangelo & Vakil, P.C.  
P.O. Box 1048  
Media, PA 19063-0848  
telephone: 610-565-2669  
fax: 610-565-0780  
email: skemether@kgpv.com

Attorneys for Defendant Leachco, Inc.

## CERTIFICATE OF SERVICE

I certify that I electronically transmitted this document to the Clerk using the ECF System so as to cause transmittal of a Notice of a Electronic Filing to the following ECF registrant:

Andrew J. Katsock, III

Attorney for Babyage.com, Inc. and John M. Kiefer, Jr., on March 26, 2008.

s/ Gary Peterson